

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY

MICHAEL A. COX, *EX REL*
PEOPLE OF THE STATE OF MICHIGAN
AND THE MICHIGAN DEPARTMENT OF
COMMUNITY HEALTH,

Plaintiffs,

Case No 06-1039 -CZ

v

Hon William E Collette

SPECIALIZED PHARMACY SERVICES, INC.,
SPECIALIZED PHARMACY SERVICES, LLC,
OMNICARE, INC, AND TCPI ACQUISITION CORP.,
d/b/a SPECIALIZED PHARMACY SERVICES - WEST,
OMNICARE PHARMACY SERVICES - GRAND RAPIDS,
TOTAL CARE PHARMACY AND TOTAL
CARE SERVICES,

Defendants

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SETTLEMENT AGREEMENT

I Parties

This Settlement Agreement is entered into between Plaintiffs Michael A Cox, Attorney General of the State of Michigan, *ex rel* the People of the State of Michigan and the Michigan Department of Community Health, and Defendants Specialized Pharmacy Services, Inc., Specialized Pharmacy Services, LLC, Omnicare, Inc., and TCPI Acquisition Corp., d/b/a

Specialized Pharmacy Services -- West, Omnicare Pharmacy Services -- Grand Rapids, Total Care Pharmacy and Total Care Services (collectively referred to as "Specialized" or "Defendants")

II. Preamble

2.1 Defendant Specialized Pharmacy Services, Inc. was a corporation organized and operating under the laws of the State of Michigan. On June 29, 2006, Specialized Pharmacy Services, Inc. merged into SPS Acquisition Sub, LLC, a limited liability company organized and operating under the laws of the State of Michigan, and changed its name to Specialized Pharmacy Services, LLC. At all times relevant to this action Specialized Pharmacy Services, Inc. was engaged in the sale and distribution of pharmaceutical products to health care providers who serve Medicaid beneficiaries, including nursing facilities, long term care facilities and hospices. Specialized Pharmacy Services, Inc. serves its customers from locations in Livonia and West Branch, Michigan. Specialized Pharmacy Services, Inc. has been owned by Defendant Omnicare, Inc., since June 1995.

2.2 Defendant TCPI Acquisition Corp. is a corporation organized and operating under the laws of the State of Delaware and authorized by the State of Michigan to transact business in Michigan. TCPI is engaged in the sale and distribution of pharmaceutical products to health care providers who serve Medicaid beneficiaries, including nursing facilities, long term care facilities and hospices. TCPI does business under the assumed names of Specialized Pharmacy Services -- West, Omnicare Pharmacy Services -- Grand Rapids, Total Care Pharmacy and Total Care Services. TCPI's principal pharmaceutical business is conducted under the assumed name of Specialized Pharmacy Services -- West (Specialized West), which is located in Grand Rapids, Michigan. TCPI has been owned by Defendant Omnicare, Inc., since March 1997.

2 3 Defendant, Omnicare, Inc is a corporation organized under the laws of the State of Delaware and authorized by the State of Michigan to transact business in Michigan Omnicare's principal offices are located in Covington, Kentucky, and its web site describes the nature of its business as: "Omnicare is the nation's leading provider of pharmaceutical care for seniors [serving] residents of skilled nursing, assisted living, and other healthcare facilities in 47 states and Canada " Omnicare is the owner of the other Defendant corporations

2 4 The Amended Complaint in this matter was filed on or about October 4, 2006 In the Complaint, Plaintiffs allege that Defendants are liable for violations of the Michigan Medicaid False Claims Act (Count I), Breach of Contract (Count II), Unjust Enrichment (Count III), and Conversion (Count IV) based on the following alleged conduct:

A Unit Dose and Consumption Billing

2 5 Medicaid Pharmacy policy allows Defendants, and other pharmacies that serve long term care recipients, to bill Medicaid using a unit dose system for oral solid medications Section 15 2 of the Medicaid Provider Manual states that "unit dose for oral solids is encouraged for N F beneficiaries, but not mandated " Unit dose pharmacies bill Medicaid "for the actual quantity consumed by the beneficiary, not the quantity dispensed" and Medicaid pays unit dose pharmacies a 3 cent premium for each tablet or capsule that the pharmacy packages for unit dose Section 15 2 of the Medicaid Provider Manual Unit dose pharmacies agree to maintain adequate documentation which "must support any credit for drugs not consumed by the patient which are returned to the pharmacy inventory " 1999 Unit Dose Agreements Specialized entered into Unit Dose Pharmacy Agreements with the Michigan Medicaid Program in 1987 and 1999, but in July 2005 Specialized ceased billing Medicaid for the 3 cent premium Further, from 1999 through 2005, Specialized billed \$4,908,285 00 in unit dose charges, but did not credit Medicaid for unit dosed medications that were returned because they were not consumed

2 6 Moreover, contrary to Medicaid policy and the Provider Enrollment and Unit Dose Agreements, from January 1, 1999, through December 31, 2005, Specialized over billed Medicaid \$12,313,529 00 for medications that were not consumed, and were not credited back to Medicaid after they were returned

2 7 The State of Michigan alleges that Defendants knew that these claims were false claims, and when they represented that the claims were proper by submitting the claims and accepting payment, they knew they were making a false statement Defendants deny the allegations

B Billing for Prescriptions Dispensed after Death

2 8 When a Medicaid beneficiary dies, the beneficiary's need for pharmaceuticals ceases and there is no valid basis to continue to dispense medications to the decedent after the pharmacy learns of the death When an Enrolled Pharmacy such as Specialized learns that it has billed the Medicaid Program for medications dispensed after a Medicaid beneficiary's death, it is required to submit a claim adjustment

2 9 From 2000 through 2005, Specialized sometimes dispensed and billed the Michigan Medicaid Program for medications to persons who had been dead for at least 30 days Claims by Specialized to Medicaid for prescriptions dispensed after death total at least \$347,480 00 during the six-year period.

2 10 The State of Michigan alleges that Defendants knew that these claims for prescriptions dispensed to deceased persons were false claims Also, when they represented that these claims were proper by submitting and accepting payment, and failing to submit adjustments for claims, Defendants knew they were making false statements Defendants deny the allegations

2 11 Collectively, the conduct and damages identified in paragraph 2 5 – 2 10 will be referred to as the "Covered Conduct " As a result of the Covered Conduct the Medicaid program suffered damages and the Plaintiffs are entitled to damages and other relief under all four counts of the Complaint

III. Terms and Conditions

Now, therefore, before the taking of any testimony and without discovery or trial of any issue of fact or law, and in reliance on the representations contained herein and in the Corporate Integrity Agreement that is attached hereto, the Parties agree as follows

A Jurisdiction and Venue

3 1 This Court has jurisdiction over the subject matter of this action pursuant to the Medicaid False Claims Act, MCL 400 601 *et seq*, and the Revised Judicature Act (RJA), MCL 600 601 and 600 605 The Court has personal jurisdiction over Defendants pursuant to Sections 705, 711 and 715 of the RJA, and MCL 600 705, 600 711, and 600 715

3 2 Venue is proper in the 30th Judicial Circuit Court in Ingham County, pursuant to MCL 400 611 and MCL 14 102

B Objectives of this Settlement Agreement

3 3 The Parties agree that settlement of this action is in the public interest and that entry of this Settlement Agreement, without further litigation, is the most appropriate means of resolving the issues raised herein

3 4 The objectives of this Settlement Agreement are to settle the claims alleged in the Complaint in a manner and under terms satisfactory to the parties

C Corporate Integrity Agreement

3 5 The parties have entered into a Corporate Integrity Agreement which is designed to improve Specialized's Medicaid billing practices and to demonstrate Specialized's

commitment to comply with Medicaid pharmacy policy and procedure governing access to records and the providing of and billing for pharmaceuticals

3.6 The Corporate Integrity Agreement is the basis upon which the Settlement Agreement is entered and it is hereby incorporated by reference in this Settlement Agreement as if fully set forth

D. Settlement

3.7 Specialized agrees to pay the sum of \$49,001,431.00. This amount represents \$15,900,477.00 in Medicaid reimbursement, \$31,800,954.00 in satisfaction of claims under MCL 400.612, \$300,000.00 in investigative costs, and \$1,000,000.00 for public service announcements payable as follows: a) by October 10, 2006 -- \$42,001,431.00, of which \$42,001,431.00 shall be payable to the State of Michigan and includes \$300,000.00 for reimbursement of the Michigan Department of Attorney General's investigative costs, b) by October 10, 2006, a separate check in the amount of \$1,000,000.00 payable to a non-profit entity to be named at a later date for the purchase of public service announcements and/or development and maintenance of a web site regarding drug pricing, c) on December 15, 2007 -- \$2,000,000.00 to the State of Michigan, d) on December 15, 2008, \$2,000,000.00 to the State of Michigan, and e) on December 15, 2009 -- \$2,000,000.00 to the State of Michigan.

3.8 In consideration of this Agreement and the Corporate Integrity Agreement and subject to the exceptions from release set forth in Paragraphs 3.9 and 3.17 below, the Plaintiffs, on behalf of the State, release Defendants, their predecessors, and their current and former corporate parents, affiliates, divisions, subsidiaries, successors and assigns, and their current and former directors, officers and employees from any civil claims and, except for any action or claim that is pending when this Agreement is executed, administrative claims for Medicaid damages or penalties that they have or may have relating to the Covered Conduct from 1999

through the effective date of this Agreement. Successful completion of the Corporate Integrity Agreement will fully discharge Defendants from any obligation to pay Medicaid-related restitution, damages, and/or any fine or penalty to the State for the Covered Conduct from 1999 through the effective date of this Agreement.

3.9 Notwithstanding any term of this Agreement, the State of Michigan specifically does not herein release any person or entity from any and all of the following: (a) any potential criminal, civil or administrative claims arising under Michigan revenue codes; (b) any criminal liability not specifically released in paragraph 3.10; (c) any civil or administrative liability that Defendants have or may have under any state statute, regulation, or rule not covered by the release; (d) except as explicitly stated in this Settlement Agreement or the Corporate Integrity Agreement, any administrative liability, including mandatory exclusion from the Michigan Medicaid Program; (e) any liability to the State of Michigan (or its agencies) for any conduct other than the Covered Conduct; (f) any claims based upon obligations created by this Settlement Agreement or the Corporate Integrity Agreement; (g) any express or implied warranty claims or other claims for defective or deficient products and services provided by Defendants; (h) any claims for personal injury or property damage or for other consequential damages arising from the Covered Conduct; (i) any claim based on a failure to deliver items or services due; (j) any criminal, civil or administrative claims against individuals, including current and former directors, officers, and employees of Specialized, its predecessors, subsidiaries, and affiliates, who receive written notification that they are the target of a criminal investigation, are criminally indicted or charged, or are convicted, or who enter into a criminal plea agreement. As of the date of this Agreement, the Attorney General acknowledges that the only individual to whom this

subsection (j) is currently anticipated to apply is the former President of Specialized, Daniel Lohmeier.

3 10 If Specialized complies with the requirements of this Agreement and the Corporate Integrity Agreement, the Attorney General will not file criminal charges against Specialized for the Covered Conduct. Criminal charges may be filed against Specialized for the Covered Conduct if Specialized engages in conduct that constitutes a material breach of this Agreement or the Corporate Integrity Agreement. Whether to file criminal charges is within the sole discretion of the Attorney General.

3 11 Specialized agrees that the statute of limitations applicable to criminal charges against it related to the Covered Conduct will be tolled during the term of the Corporate Integrity Agreement and during any litigation or other proceedings to monitor or enforce this Agreement, and for a period of 90 days beyond the expiration or termination of the Corporate Integrity Agreement.

3 12 Other than the representations contained in this Agreement, the Attorney General has not made representations regarding any criminal, civil or administrative disposition of the Covered Conduct. This Agreement does not address or preclude the Attorney General or any other state or federal agency from taking any action allowed or required by law or to investigate any violation of state or federal law.

3 13 Defendants fully and finally release the State of Michigan, its agencies, employees, servants, and agents from any claims (including attorneys fees, costs, and expenses of every kind and however denominated) which Defendants have asserted, could have asserted, or may assert in the future against the state of Michigan, its agencies, employees, servants, and

agents, related to or arising from the investigation and prosecution of the Covered Conduct up to the effective date of this Settlement Agreement

3.14 The Parties acknowledge and agree that this Settlement Agreement is a compromise of disputed claims and that it shall not be construed to be an admission or concession of any fact, liability, or fault

E Retention of Jurisdiction

3.15 While the Corporate Integrity Agreement remains in effect, this Court shall retain jurisdiction over this action to hear any claims for specific performance of the Corporate Integrity Agreement and, to the extent allowed by the Corporate Integrity Agreement or agreed to by the parties, take any action necessary or appropriate to construe or implement the Corporate Integrity Agreement

3.16 If the Corporate Integrity Agreement terminates or expires by Specialized's successful completion of the terms and conditions thereof, the parties shall submit a stipulated order dismissing the case with prejudice and without costs or fees

3.17 If, however, at the time Corporate Integrity Agreement is to terminate or expire, Specialized has (a) failed to remedy an ongoing material breach for which the reasonable time to cure has passed, or (b) failed to pay liquidated damages as provided under the Corporate Integrity Agreement, or (c) failed to pay any sums due under this Settlement Agreement, the Parties agree that at the request of the Plaintiffs an order shall enter setting aside this Settlement Agreement, and the Plaintiffs may prosecute the claims set forth in the complaint

F Disputes

3.18 The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under this Settlement Agreement and the Corporate Integrity Agreement. Any dispute that arises under this Settlement Agreement or the Corporate Integrity Agreement shall

in the first instance be the subject of informal negotiations between the parties. The period of negotiations shall not exceed 10 days from the date of written notice by any party that a dispute has arisen, but it may be extended by an agreement of the parties. The period for informal negotiations shall end when the MDCH provides a written statement setting forth its proposed resolution of the dispute to Specialized.

3 19 If Specialized and the MDCH cannot resolve a dispute by informal negotiations, then the dispute shall be resolved in accordance with the resolution proposed by the MDCH unless, within 10 days after receipt of the MDCH's proposed resolution, Specialized files a petition for resolution with this Court setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to insure orderly implementation of this Settlement Agreement and the Corporate Integrity Agreement. Any judicial review shall be limited to the record created during the course of the dispute. In proceedings on any dispute, Specialized shall bear the burden of persuasion on factual issues.

3 20 The filing of a petition for resolution of a dispute with this Court shall not of itself extend or postpone any payments due under paragraph 3 7 of this Agreement, or any other obligation of Specialized under this Settlement Agreement or the Corporate Integrity Agreement. Notwithstanding the invocation of the dispute resolution, liquidated damages, with any applicable interest, shall accrue from the first day of any failure or refusal to comply with any term or condition of this Settlement Agreement and the Corporate Integrity Agreement. In the event, and to the extent, that Specialized does not prevail on the disputed issue, liquidated damages and any applicable interest shall be paid within 10 calendar days in the manner provided for in Section VII (Liquidated Damages) of the Corporate Integrity Agreement. Specialized shall not be assessed liquidated damages for disputes resolved in its favor.

3 21 Notwithstanding this Section III-F, Specialized shall pay that portion of a demand for reimbursement of costs or payment of liquidated damages that is not subject to good faith resolution in accordance with and in the manner provided in Section VII (Liquidated Damages) of the Corporate Integrity Agreement, as appropriate

G Signatories and Effective Date

3 22 The signatories to this Settlement Agreement certify that they are authorized to execute this Settlement Agreement and to legally bind the parties they represent Each of the signatories is executing this Settlement Agreement in his official capacity

3 23 This Agreement may be executed by counterpart signatures and copies of the Agreement shall have the same binding force and effect as an original

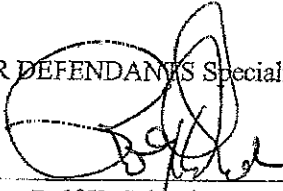
3 24. This Settlement Agreement shall be effective upon the date that it is entered by the Court

FOR PLAINTIFFS Michael A Cox, *ex rel*
People of the State of Michigan and the Michigan Department of
Community Health

By: Janet Olszewski Dated: October 5, 2006
Janet Olszewski, Director
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By: Mark Matus Dated: October 5, 2006
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FOR DEFENDANTS Specialized Pharmacy Services, Inc , et al

By:  Dated: 10/4, 2006

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By:  Dated: 10/4/06, 2006

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As Attorneys for Defendants and As To Form Only

CASES/2006-08-5208/SETTLEMENT AGREEMENT 061004

CORPORATE INTEGRITY AGREEMENT

BETWEEN:

SPECIALIZED PHARMACY SERVICES, INC., *et al*

-AND-

ATTORNEY GENERAL OF THE STATE OF MICHIGAN

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AGREEMENT

This Agreement is entered into between the State of Michigan acting through Michael A Cox, Attorney General of the State of Michigan and Specialized Pharmacy Services, Inc , Specialized Pharmacy Services, LLC, Omnicare, Inc , and TCPI Acquisition Corp , d/b/a Specialized Pharmacy Services – West, Omnicare Pharmacy Services – Grand Rapids, Total Care Pharmacy and Total Care Services

I. Preamble

1.1. As a result of the Attorney General's investigation of Specialized's billing the Michigan Medicaid Program for pharmaceuticals provided to Medicaid recipients during 1999 through 2005, specifically its conduct related to unit dose billing practices, billing for hospice patients' terminal illness prescriptions, and billing for prescriptions after a patient's death, which investigation lead to the Attorney General filing suit against Specialized, *Michael A Cox, et al v Specialized Pharmacy Services, Inc et al*, Ingham County Circuit Court Case No. 06-1039-CZ, Specialized enters into this Agreement to demonstrate its commitment to comply with Medicaid pharmacy policy and procedure governing access to records and billing for pharmaceuticals

II. Terms and Conditions

In consideration of the mutual promises, covenants, and obligations set forth in this Agreement, the Parties agree as follows:

A. Definitions

For purposes of this Agreement, the following definitions apply:

2.1. "Attorney General" means the Attorney General of the State of Michigan, or his designee, including but not limited to, Assistant Attorneys General, Special Agents, and any individual or entity designated by the Attorney General to assist in the fulfillment of the Attorney General's rights and obligations under this Agreement.

2.2 "Information" includes but is not limited to, interviews, documents, raw and processed data, records, reports, statements, charts, contracts, agreement memorandum, correspondences, medical records, quality assurance and control data, and peer review committee records, regardless of how the information is recorded or stored

2.3 "Law" or "laws" mean state and federal statutes, rules, regulations, guidelines, policies, regulatory directives, and legal requirements established by case law.

2.4 "Parties" mean the Attorney General and Specialized

2.5 "Facility" or "Facilities" mean any pharmacy facility licensed to operate in the State of Michigan that is owned or operated by Specialized, including the facilities located in Livonia, Grand Rapids and West Branch

2.6 "Overpayment" means the amount of money Specialized has received in excess of the amount due and payable under the laws, policies and procedures of the Medicaid Program.

2.7 "MDCH" means the Michigan Department of Community Health, including any agent, contractor or employee

2.8 "Reportable event" means a) a substantial overpayment, and b) anything that must be reported by law or anything that would be considered a probable violation of applicable criminal laws or a probable violation of any contract with the State of Michigan or the Medicaid Pharmacy Provider rules, regulation or policies, and c) a material breach of this Agreement regardless of whether there is a violation of law or regulation. A reportable event may be the result of an isolated event or a series of related occurrences

2.9 "Specialized" means Specialized Pharmacy Services, Inc., Specialized Pharmacy Services, LLC and TCPI Acquisition Corp., d/b/a Specialized Pharmacy Services - West, Omnicare Pharmacy Services -- Grand Rapids, Total Care Pharmacy and Total Care Services

B. Agreement by the Parties

2.10 The Boards of Directors of Omnicare, Inc., and TCPI Acquisition Corp., and the Managing Member of Specialized Pharmacy Services, LLC, have authorized Rolf K. Schrader, Regional Vice President of Omnicare, to bind Omnicare and Specialized to the terms of this CIA by his signature. Copies of each of the Boards' resolutions, and the Managing Member's delegation of authority, authorizing execution of this CIA will be provided to the Attorney General or the MDCH upon request.

2.11 This Agreement is effective for a period of two years from the date on which the final signatory is executed, and is subject to extension or termination as provided below.

2.12 This Agreement is binding on and enforceable against the successors and assigns of the Parties.

2.13 The governing bodies of Omnicare, Inc., and TCPI Acquisition Corp., are their Boards of Directors. Specialized Pharmacy Services, LLC is managed and controlled by a Managing Member. The Boards and the Managing Member are ultimately responsible for implementing this Agreement and for compliance with the terms and conditions of this Agreement. Board members shall not be individually liable for liquidated damages under this Agreement unless their conduct creates personal liability under state law.

2.14 Specialized understands that this Agreement is conditioned on it cooperating fully with the Attorney General and any other state or federal agency in any monitoring, audits, inspections, interviews, document reviews, or investigations resulting from this Agreement.

2.15 The promises, agreements, preamble and actions undertaken by Specialized under this Agreement, do not:

- a. Constitute an admission of liability with respect to the claims submitted by Specialized to Medicaid;

- b Relieve Specialized from their obligation to comply with the Medicaid Program, including policies and procedures, comply with contracts, or comply with state and federal law; or
- c Represent or imply that Specialized has or has not complied with the Medicaid Program or any or all state and federal laws

2.16. Any action taken by the MDCH, the Department of Justice, or any other state or federal agency or department will not affect the obligations of Specialized under this Agreement. Should a regulatory agency take action against Specialized that is in direct conflict with a requirement of this Agreement, Specialized shall comply with the directive of the regulatory agency unless or until the Attorney General resolves the conflict with the agency.

2.17. All Parties will maintain all documents, reports, files, charts, and other evidence relevant to the January 1, 1999 through December 31, 2005 time period until at least ninety (90) days after successful completion of this Agreement and the conclusion of all litigation or other proceedings to monitor or enforce this Agreement, or as required by law, whichever is longer.

2.18. Specialized shall pay all costs and expenses associated with compliance and enforcement of this Agreement, including but not limited to:

- a The costs and expenses of the Compliance Officer, the Compliance Audits and all monitoring, testing, inspections, auditing, investigation, liquidated damages, or other enforcement requirements of this Agreement;
- b The cost of any materials needed to fulfill Specialized's training requirements; and
- c Enforcement costs, including but not limited to, the costs and expenses of litigation or otherwise resolving disputes under this Agreement, including reasonable attorney fees, if the Attorney General's Office is the prevailing party in such enforcement action.

2.19. Specialized will fully comply with all of the requirements of state and federal law, including, but not limited to, the Medicaid False Claims Act, MCL 400 601 *et seq*

2.20. In addition to any other rights under this Agreement or provided by law, the Attorney General or the MDCH may, in their sole discretion, exercise any right given by this Agreement to obtain, use, and receive any information and documents received pursuant to this Agreement.

2.21. When requested by the Attorney General, an authorized executive official of Omnicare and Specialized must certify under penalty of perjury that all information and representations provided under this Agreement are true, accurate, and complete to the best of their knowledge.

2.22. Specialized agrees that, except for the attorney-client privilege and attorney work product doctrine, it shall not assert any privilege defense or refuse to produce any audits, audit work papers, supporting exhibits, analytical documents, reports, raw data, internal memoranda, quality assurance, risk management information, peer review, or other information that the Attorney General may require under the terms of this Agreement. The information may be used for any purpose within the jurisdiction of the Attorney General or the MDCH. The Attorney General may use and disclose the information to any state or federal agency or department consistent with their statutory authority.

2.23. Specialized recognizes that any documents, data, report, and other information disclosed to the Attorney General will be subject to verification, audit, and investigation. Suspected Medicaid Program violations revealed during the verification process may, at the Attorney General's sole discretion, be pursued by the initiation of an audit, investigation, prosecution, administrative proceeding, civil suit, or referral to the appropriate state or federal agency or department for further action.

C Corporate Integrity Requirements

Specialized shall take any and all actions necessary to achieve compliance with the following requirements.

1. Compliance with Provider Enrollment Agreement and Medicaid Policy governing Access to Facilities and Records

2.24. By enrolling in the Medicaid Program as a provider Specialized agreed to allow MDCH and their authorized agents and representatives, access to all information concerning any services covered by Medicaid without regard to authorization from Medicaid beneficiaries.

2.25. Specialized shall provide the MDCH and its agents with access to all information concerning any services covered by Medicaid without regard to authorization from Medicaid beneficiaries. To extent reasonably feasible the MDCH shall limit disruption of patient-care operations of Specialized.

2.26. This access includes, but is not limited to, access to all areas of the Facilities where records are maintained or activities are conducted that concern any services covered by Medicaid, including areas where medications are returned and destroyed, and access to all records of medications that are returned or destroyed. Medicaid related records and returned medications shall be maintained in a manner that allows for their review, audit and examination separate from those of non-Medicaid patients.

2. Compliance with Unit Dose Billing Agreements and Medicaid Policy governing Consumption Billing

2.27. Medicaid Pharmacy policy allows Defendants, and other pharmacies that serve long term care recipients, to bill Medicaid using a unit dose system for oral solid medications. Section 15.2 of the Medicaid Provider Manual states that "unit dose for oral solids is encouraged for N.F. beneficiaries, but not mandated." Unit dose pharmacies bill Medicaid "for the actual quantity consumed by the beneficiary, not the quantity dispensed" and Medicaid pays unit dose

pharmacies a 3 cent premium for each tablet or capsule that the pharmacy packages for unit dose. Medicaid Pharmacy Provider Manual, Chapter III, Sec. 17, p 1, 01-02-02 (revised: Section 15 2 in Pharmacy Chapter of Michigan Medicaid Provider Manual).

2.28. Unit Dose Agreements between the Medicaid Program and pharmacy providers serving long term care recipients require, among other things, the pharmacy to provide a unit dose system, to maintain adequate records detailing the quantities of medications ordered, dispensed and consumed, and to bill Medicaid for medications that were actually consumed regardless of the amount dispensed. Unit dose pharmacies agree to maintain adequate documentation which "must support any credit for drugs not consumed by the patient which are returned to the pharmacy inventory." 1999 Unit Dose Agreements.

2.29. A pharmacy that enters into a Unit Dose Agreement and complies with all of the requirements of the Unit Dose Agreement and the Provider Manual is entitled to bill an additional sum of 3 cents per tablet or capsule that it unit doses and dispenses for Medicaid beneficiaries.

2.30. Specialized entered into Unit Dose Pharmacy Agreements with the Michigan Medicaid Program in 1987 and 1999, but in July 2005 Specialized ceased billing Medicaid for the 3 cent premium. Specialized did not obtain an agreement from MDCH to terminate the Unit Dose Agreements or terminate billing on a consumption basis. The MDCH and the Attorney General maintain that the MDCH's agreement to terminate the Unit Dose Pharmacy Agreements was required and Specialized asserts that it was not.

2.31. The MDCH is beginning the process of amending the Pharmacy Chapter of Michigan Medicaid Provider Manual as it pertains to unit dose systems and consumption billing and it is anticipated that this process will be completed in approximately 120 days. Instead of

attempting to resolve the dispute between the parties over the requirements of the Unit Dose Agreements and the Provider Manual's consumption billing provisions, Specialized may continue its current practices regarding unit dose systems and consumption billing until such time as the MDCH has completed the amendment process. Once the amendment process is complete, Specialized shall comply with the amended requirements of Medicaid policy, including policy changes that become effective by issuance of a policy bulletin.

2.32. This CIA does not supersede future change in law or policy governing unit dose systems or consumption billing, nor does it alter the right of an aggrieved party to contest any such change.

3. Compliance with Medicaid Policy governing Hospice Patient Terminal Illness Prescriptions

2.33. When a Medicaid beneficiary is terminally ill and is being treated at a hospice, all medications and nutritional supplements related to the terminal illness are to be provided by the hospice service. The hospice, not Medicaid, is responsible for reimbursing the pharmacy for those medications and supplements. Medicaid policy states that "[a] pharmacy must not bill the Program for prescription services related to the terminal illness," and requires the pharmacy to confirm that it is not billing for such medications before it bills Medicaid. Medicaid Pharmacy Provider Manual, Chapter III, Sec. 1, p 2, 01-02-02 (revised: Section 1.6 in Pharmacy Chapter of Michigan Medicaid Provider Manual).

2.34. Pharmacies may separately bill Medicaid for covered medications that are not related to the terminal illness. It is the responsibility of the pharmacy, however, to assure that any claim it submits to the Medicaid Program is not for a medication that is related to the beneficiary's terminal illness. Medicaid Pharmacy Provider Manual, Chapter III, Sec. 1, p 2, 01-02-02 (revised: Section 1.6 in Pharmacy Chapter of Michigan Medicaid Provider Manual).

Pharmacies shall develop a method for obtaining from hospices the information necessary to comply with Program requirements. The method shall be designed to produce reasonably reliable information upon which the pharmacies may rely

2.35. Specialized shall assure that any claim it submits to the Medicaid program is not for a medication that is related to a beneficiary's terminal illness.

4. Compliance with Medicaid Policy governing Prescriptions Dispensed after Death

2.36. When a Medicaid beneficiary dies, the beneficiary's need for pharmaceuticals ceases and there is no valid basis to continue to dispense medications to the decedent after the pharmacy learns of the death. Pharmacies shall develop a method for obtaining from their customers the information necessary to comply with Program requirements. The method shall be designed to produce reasonably reliable information upon which the pharmacies may rely

2.37. When an Enrolled Pharmacy learns that it has billed the Medicaid Program for medications dispensed after a Medicaid beneficiary's death, it is required to submit a claim adjustment. Medicaid policy requires the Enrolled Provider to correct any billing for prescriptions it dispensed which the Medicaid beneficiary never received. Medicaid Pharmacy Provider Manual, Chapter IV, p 11, 4-01-96 (revised: Pharmacy Provider Manual for Michigan Medicaid, Sec. 2.4, p 7, 7-31-03)

2.38. Specialized shall stop dispensing prescriptions not more than 2 days after it receives actual or constructive notice that a beneficiary has died, and shall promptly correct any billing for prescriptions it dispensed which the Medicaid beneficiary never received. Specialized shall report any instance of a nursing home, hospice or other care provider failing to promptly notify Specialized of the death of a beneficiary

III. Compliance Program

To ensure compliance with the Corporate Integrity Requirements set forth above, Specialized shall establish and maintain a Compliance Program that includes the following elements

A. Compliance Officer

3.1. Prior to the effective date of this Agreement, Omnicare appointed an individual to serve as its Compliance Officer and shall maintain its Corporate Compliance Officer throughout the term of the CIA. The Compliance Officer shall be responsible for developing and implementing policies, procedures, and practices designed to ensure compliance with the requirements set forth in this CIA and with Medicaid Program requirements. The Compliance Officer shall be a member of senior management of Omnicare, shall make quarterly reports regarding compliance matters directly to the Audit Committee of the Board of Directors of Omnicare, and shall be authorized to report on such matters to the Audit Committee of the Board of Directors at any time. The Compliance Officer shall not be the General Counsel or Chief Financial Officer, or subordinate to either. The Compliance Officer shall be responsible for monitoring the day-to-day compliance activities engaged in by Specialized as well as for any reporting obligations created under this CIA.

3.2. Specialized shall report to the Attorney General, in writing, any changes in the identity or position description of the Compliance Officer; or any actions or changes that would affect the Compliance Officer's ability to perform the duties necessary to meet the obligations in this CIA, within 15 days after such a change.

B. Policies and Procedures.

3.3 Within 120 days after the effective date of this Agreement, Specialized shall implement written policies and procedures regarding the operation of Specialized's compliance program and its compliance with the Medicaid laws, policies and procedures. At a minimum, the Policies and Procedures shall address:

- a. The MDCH's right of access to records and facilities;
- b. The requirements of unit dose billing agreements and Medicaid policy governing consumption billing;
- c. The obligation that claims submitted to the Medicaid program are not for a medication that is related to a Medicaid beneficiary's terminal illness when the beneficiary is in a hospice;
- d. The obligation that Facilities stop dispensing prescriptions not more than 2 days after receiving notice that a Medicaid beneficiary has died, and promptly correcting any billing for prescriptions dispensed which the beneficiary never received;
- e. Appropriate billing and submission of claims to the Medicaid Program.

3.4. Within 120 days after the effective date of this Agreement, Specialized shall distribute the relevant Policies and Procedures to all individuals whose job functions relate to those policies and procedures. Appropriate and knowledgeable staff shall be available to explain the policies and procedures.

3.5. At least annually (and more frequently, if appropriate), Specialized shall assess and update as necessary the Policies and Procedures. Within 30 days after the effective date of any revisions, the relevant portions of any such revised Policies and Procedures shall be distributed to all individuals whose job functions relate to those policies and procedures.

C. Training and Education.

3.6 Within 120 days after the effective date of this Agreement, Specialized shall provide at least two hours of training to all persons whose job functions relate to the policies and procedures developed pursuant to the Compliance Program. The training required under this section may run concurrent with other training obligations. This training, at a minimum, shall explain:

- a. Specialized's CIA requirements;
- b. Specialized's Compliance Program;
- c. Medicaid's requirements regarding the Unit Dose system and submission of claims (including, if applicable, compliance with the Unit Dose Agreement and crediting returned prescriptions);
- d. Medicaid's requirements regarding consumption billing and submission of claims;
- e. Medicaid's billing requirements and limitations for Hospice patients' terminal illness prescriptions;
- f. Prohibitions against billing for prescriptions dispensed after receiving notice of death and crediting prescriptions a Medicaid beneficiary did not receive;
- g. Requirements that facilities maintain adequate documentation which must support any credit for drugs not consumed by the patient which are returned to the pharmacy inventory;
- h. The personal obligation of each individual involved in the claims submission process to ensure that such claims are accurate;
- i. The personal obligation of each individual involved with the acceptance and processing of prescription drug returns to ensure that such returns are properly processed;
- j. The legal sanctions for violations of the Medicaid Program, including applicable legal sanctions and consequences of violations of the CIA; and
- k. Examples of proper and improper claims submission practices.

3.7. After receiving the initial training described above, each person whose job functions relate to the policies and procedures set forth in this CIA shall receive at least one hour of refresher training annually. The training required under this paragraph may run concurrent with other training obligations

3.8. Persons who are assigned to job functions relating to the policies and procedures set forth in this CIA after the initial training takes place shall receive the training described above within 30 days after being assigned. Until they have received the requisite training, such persons shall work under the direct supervision of a person who has received such training.

3.9. Each person who is required to attend training shall certify in writing, or in electronic form, if applicable, that he or she has received the required training. The certification shall specify the type of training received and the date received. The Compliance Officer (or designee) shall retain the certifications, along with all course materials, and they shall be made available to the Attorney General and the MDCH upon request.

3.10. Specialized shall annually review the training and where appropriate update the training to reflect changes in the Medicaid Program policies and procedures.

D. Compliance Audits

3.11. Compliance audits will be conducted by the MDCH or its agents at such frequency as the MDCH deems appropriate to determine whether Specialized is complying with the Corporate Integrity Requirements and Compliance Program of this CIA, Sections IIC and III. This CIA does not restrict the authority of the MDCH or the Attorney General to audit any other matters related to compliance with the Medicaid Program, and they retain the right to do so separately or in conjunction with a Compliance Audit under this CIA.

3.12 The parties anticipate up to three audits over the term of this CIA. Specialized will reimburse MDCH for all reasonable costs and expenses MDCH incurs in conducting these compliance audits (to the extent such audits relate to compliance with the CIA and the conduct described in the Preamble), including but not limited to the reasonable costs and expenses of consultants the MDCH may select to conduct the audits.

3.13 Upon completion of a compliance audit, an audit report shall be prepared and submitted to the Parties. The report will, at a minimum, describe the methodologies employed, describe the statistical sampling techniques, and include a narrative statement of the findings and supporting rationale of the audit, including whether Specialized has satisfied each of the Corporate Integrity Requirements and properly implemented the Compliance Program.

3.14 If a Compliance Audit determines that there has been an overpayment, Specialized shall, within 30 days, repay any overpayment(s) or otherwise respond to the Medicaid Program in accordance with Medicaid policy governing post-payment review and the appeal or review of adverse actions by MDCH. If Specialized does not repay or respond to MDCH within the 30 day period, MDCH may offset the overpayment(s) from amounts due or that may become due from the Medicaid Program. A payment or adjustment does not relieve Specialized of its obligations under this CIA (other than the repayment obligation hereunder), or negate the conclusion that there was a breach of the CIA.

IV. Reporting

A. Implementation and Annual Reports

4.1 Within 120 days after the effective date, Specialized shall submit a written report to the Attorney General and MDCH summarizing the status of its implementation of the

requirements of this CIA (Implementation Report). The Implementation Report shall, at a minimum, include:

- a. the name, address, phone number, and position description of the Compliance Officer, and a summary of other noncompliance job responsibilities the Compliance Officer may have;
- b. a copy of all Policies and Procedures required by this CIA;
- c. the following information regarding each type of training required by this CIA:
 - (1) a description of such training, including a summary of the topics covered, the length of sessions and a schedule of training sessions;
 - (2) the number of individuals required to be trained, percentage of individuals actually trained, and an explanation of any exceptions; and
 - (3) a copy of all training materials and the documentation supporting this information shall be available to the Attorney General and the MDCH upon request
- d. a description of any actions in addition to changes in policy, procedure and training taken to comply with this CIA.

4.2 Specialized shall submit an annual written report to the Attorney General and MDCH summarizing its implementation and compliance with the terms and requirements of this CIA (Annual Report). Each Annual Report shall include, at a minimum:

- a. any change in the identity, position description, or other non-compliance job responsibilities of the Compliance Officer;
- b. a summary of any significant changes or amendments to the Policies and Procedures required by this CIA and the reasons for such changes;
- c. the following information regarding each type of training required by this CIA:
 - (1) a description of such training, including a summary of the topics covered, the length of sessions and a schedule of training sessions;

- (2) the number of individuals required to be trained, percentage of individuals actually trained, and an explanation of any exceptions; and
 - (3) a copy of all training materials and the documentation supporting this information shall be available to the Attorney General and the MDCH upon request.
- d a summary of Reportable Events identified during the Reporting Period and the status of any corrective and preventative action relating to all such Reportable Events.

4.3. The first Annual Report shall be submitted no later than 90 days after the end of the first anniversary of this CIA. The second Annual Report shall be submitted no later than the anniversary of the due date of the first Annual Report.

4.4. The Implementation Report and Annual Reports shall include a certification by the Compliance Officer that:

- a. to the best of the Compliance Officers knowledge, except as otherwise described in the applicable report, Specialized is in compliance with all of the requirements of this CIA; and
- b. the Compliance Officer has reviewed the Report and has made reasonable inquiry regarding its content and believes that the information in the Report is accurate and truthful.

B. Overpayments

4.5. If, at any time, Specialized identifies or learns of any overpayment, Specialized shall notify Medicaid within 30 days after identification of the overpayment and take remedial steps within 60 days after identification (or such additional time as may be agreed to by Medicaid) to correct the problem, including preventing the underlying problem and the overpayment from recurring. Also, within 30 days after identification of the overpayment, Specialized shall repay the overpayment to Medicaid to the extent such overpayment has been quantified. If not yet quantified, within 30 days after identification, Specialized shall notify Medicaid of its efforts to quantify the overpayment amount along with a schedule of when the quantification is expected to be completed. Notification and repayment to Medicaid shall be

done in accordance with Medicaid policies. Notwithstanding the above, notification and repayment of any overpayment amount that is routinely reconciled or adjusted pursuant to policies and procedures established by Medicaid should be handled in accordance with such policies and procedures. Any quantified overpayment not repaid within the 30 day period after identification may be adjusted by MDCH from amounts due or that may become due from the Medicaid Program. A payment or adjustment does not relieve Specialized of its obligations under this CIA (other than the repayment obligation hereunder), or negate the conclusion that there was a breach of the CIA.

C Reportable Events

4.6. If Specialized determines (after a reasonable opportunity to conduct an appropriate review or investigation of the allegations) through any means that there is a reportable event, Specialized shall notify the MDCH, in writing, within 30 days after making the determination that the reportable event exists. The notice shall include a complete description of the reportable event, including the relevant facts, persons involved, and legal and the health care program authorities implicated; a description of Specialized's actions taken to correct the reportable event; and any further steps Specialized plans to take to address the reportable event and prevent it from recurring.

4.7. The Attorney General or any other state or federal agency may, in their sole discretion, take any action permitted by law regarding the acts or omissions that gave rise to a reportable event.

D. Other Investigations

4.8. Within 30 days after discovery, Specialized shall notify the Attorney General and the MDCH in writing of any ongoing investigation or legal proceeding that is being conducted or

brought by another governmental entity or its agents involving an allegation that Specialized has committed a crime or has engaged in fraudulent activities. This notification shall include a description of the allegation, the identity of the investigating or prosecuting agency, and the status of such investigation or legal proceeding. Specialized shall also provide written notice to the Attorney General and the MDCH within 30 days after the resolution of the matter, and shall provide a description of the findings and/or results of the investigation or proceedings, if any.

V. Access to Records, Facilities and Information

5.1. In addition to the other rights set forth in this Agreement, the Attorney General and MDCH shall have the right to:

- a. Immediate access to the facilities, at any time and without prior notice, to assess compliance with this CIA and to assess the effectiveness of the policy, procedure and training related to this CIA (to extent reasonably feasible the Attorney General and MDCH shall limit disruption of patient-care operations of Specialized);
- b. Access and copy any information necessary to verify Specialized's compliance or lack of compliance with this Agreement and any information deemed relevant by the Attorney General or MDCH, including:
 - (1) Billing records;
 - (2) Invoices from manufacturers and suppliers;
 - (3) hospice patient prescriptions and billing;
 - (4) notifications of death of nursing home patients;
 - (5) inventory records, and
 - (6) prescription destruction and return records.
- c. Immediate access to and copies of any information, including all electronic data or record storage, requested by the Attorney General or the MDCH without issuance of subpoenas or other compulsory process. However, the Attorney General reserves the right to seek compulsory production of information by any means allowed by state or federal law.
- d. If the information deemed necessary to the Attorney General's or the MDCH's investigation, inspection, monitoring, enforcement, or resolution of issues related to this Agreement are not in the possession, custody, or control of Specialized, it will identify the location of such information not

in its possession or control and the individual or entity in control of the information, and will assist the Attorney General or MDCH in immediately obtaining such information. Such assistance includes, but is not limited to, the execution of any waiver, release, or authorization necessary for the Attorney General or MDCH to obtain the information

- e Technical assistance from Specialized, as the Attorney General or MDCH may request, including, but not limited to, explanation of information, procedures, and computer analysis. Specialized will provide any computer software and hardware it owns or has access to that is necessary to find, view, analyze, or interpret any information requested or provided pursuant to this Agreement.
- f Upon request, receive reasonable advance notice of and attend unannounced any training related to this CIA.

5.2 Specialized shall clearly identify any portions of its submissions that it believes are trade secrets, or information that is privileged, and therefore potentially exempt from disclosure under the Freedom of Information Act MCL 15 231 *et seq*. Specialized shall refrain from identifying any information as exempt from disclosure if that information does not meet the criteria for exemption from disclosure under FOIA.

5.3 MDCH and the Attorney General shall make a reasonable effort to notify Specialized prior to any release of information submitted by Specialized pursuant to its obligations under this CIA and identified upon submission by Specialized as trade secrets, or information privileged under FOIA.

5.4 The Attorney General or the MDCH may, at their option, conduct interviews of the employees, contractors, subcontractors, officers and directors of Specialized relating to anything relevant to compliance with this Agreement. Corporate legal counsel may be present for any interviews of corporate officers, directors and managers of Specialized facilities. Nothing in this CIA shall be interpreted as preventing a person from exercising the right to have legal counsel of their choosing present at an interview.

5.5 Specialized will, if the Attorney General or the MDCH requests, provide appropriate office space for the Attorney General's or the MDCH's interviews. The Attorney General or the MDCH may choose to conduct the interviews at a location other than the Specialized facilities.

5.6 Specialized shall allow their employees, officers, and directors to attend the interviews with a travel allowance covering meals and mileage and pay for the time spent in the interview at their normal hourly rate regardless of where or when the interview is conducted. The Attorney General and the MDCH will make reasonable efforts to conduct such interviews in a manner that does not unnecessarily interfere with Specialized's operations.

VI. Failure to Comply With Terms of Agreement

6.1 A material breach of the terms and conditions of this Agreement means:

- a. The failure to substantially comply with any of the terms and conditions of this Agreement;
- b. Providing information under this Agreement that is deliberately false or misleading or contains deliberately false or misleading information;
- d. Failure to cooperate with the Attorney General or the MDCH as required by this Agreement.

6.2 If Specialized has materially breached the terms of this Agreement and failed to cure the breach within a reasonable time, following written notice from the Attorney General of the existence of a material breach, then the Attorney General or the MDCH may, in their sole discretion: (a) exercise any rights under this Agreement and exercise any other right granted by law, including seeking exclusion of Specialized or any of its officers, directors, agents, and employees from the Medicaid Program, and all other state and federal health programs administered by the state where the law permits exclusion, or (b) extend the Agreement for a period of time equal to the length of any periods of noncompliance with this Agreement.

6 3 If the Attorney General or the MDCH decides to seek exclusion under paragraph
6 2 when permitted by law as one of the enforcement remedies, the Attorney General or MDCH
will notify Specialized and any affected individual, in writing, of the alleged breach specifying
the circumstances of the breach. Specialized and any affected individual has 15 calendar days to
respond to this notification and 30 days from the notification to demonstrate to the Attorney
General or the MDCH that they are not in material breach or that the breach has been cured or
the material breach cannot be cured within the 30-day period, but that: (i) Specialized has begun
to take action to cure the material breach; (ii) Specialized is pursuing such action with due
diligence; and (iii) Specialized has provided a reasonable timetable for curing the material
breach.

VII. Liquidated Damages

7 1 Specialized is expected to fully and timely comply with all of its CIA obligations.
As a contractual remedy, Specialized's breach of this CIA may lead to the imposition of the
following liquidated damages.

- a \$2,500 (which shall begin to accrue on the day after the date the obligation became due) for each day Specialized fails to establish and implement any of the following obligations as described in Section III:
 - 1 a Compliance Officer,
 - 2 written policies and procedures,
 - 3 training and education, and
 - 4 notification of government investigations or legal proceedings.
- b \$2,500 (which shall begin to accrue on the day after the date the obligation became due) for each day Specialized fails to report a reportable event in compliance with this CIA.
- c \$2,500 (which shall begin to accrue on the day after the date the obligation became due) for each day Specialized fails to timely submit the Implementation Report or the Annual Reports.

- d \$1,500 for each day Specialized fails to grant access to the information or documentation as required by this CIA. This liquidated sum shall begin to accrue on the date Specialized fails to grant access.
- e \$5,000 for each day Specialized is in material breach of this CIA. This liquidated sum shall begin to accrue on the day the material breach should have been discovered by Specialized through and including the day the material breach is cured, less the number of days the MDCH determines reasonable to cure the noncompliance.
- f \$5,000 for each false certification submitted by or on behalf of Specialized as part of its Implementation Report, Annual Report, additional documentation to a report (as requested by the MDCH), or otherwise required by this CIA.
- g \$1,000 for each day Specialized fails to comply fully and adequately with any obligation of this CIA and the Attorney General or the MDCH has determined that the failure is not a material breach. MDCH shall provide notice to Specialized stating the specific grounds for its determination that Specialized has failed to comply fully and adequately with the CIA obligation(s) at issue and steps Specialized shall take to comply with the CIA. This liquidated sum shall begin to accrue 10 days after Specialized receives this notice from MDCH of the failure to comply. A liquidated sum as described in this Subsection shall not be demanded for any violation for which MDCH has sought liquidated damages under Subsections a – f of this paragraph.

Should a breach by Specialized fall within more than one category of liquidated damages, the category with the highest liquidated sum shall apply.

7.2. Specialized may, in advance of the due date, submit a timely written request for an extension of time to perform any act or file any notification or report required by this CIA. Notwithstanding any other provision in this Section, if MDCH grants the timely written request with respect to an act, notification, or report, liquidated damages for failure to perform the act or file the notification or report shall not begin to accrue until one day after Specialized fails to meet the revised deadline set by MDCH. Notwithstanding any other provision in this Section, if MDCH denies such a timely written request, liquidated damages for failure to perform the act or file the notification or report shall not begin to accrue until three business days after Specialized receives written denial of such request or the original due date, whichever is later. A “timely

written request" is defined as a request in writing received by MDCH at least five business days prior to the date by which any act is due to be performed or any notification or report is due to be filed.

7.3 Upon a finding that Specialized has failed to comply with any of the obligations described in Section 7.1 and after determining that liquidated damages are appropriate, the Attorney General shall notify Specialized of: (a) Specialized's failure to comply; and (b) the Attorney General's exercise of its contractual right to demand payment of the liquidated damages (this notification is referred to as the "Demand Letter").

7.4 Within 10 days after the receipt of the Demand Letter, Specialized shall either: (a) cure the breach to the Attorney General's satisfaction and pay the applicable liquidated damages; or (b) treat the issue under the dispute resolution provision of this CIA and the Settlement Agreement entered in the Ingham County Circuit Court, which is hereby incorporated by reference as if fully set forth. Failure to respond to the Demand Letter in one of these two manners within the allowed time period shall be considered a material breach of this CIA.

7.5 The payment of liquidated damages is a remedy only for a breach of this Agreement and is not considered a civil or criminal penalty nor does it preclude specific enforcement of this Agreement, exclusion from the State's Medicaid Program, the filing of appropriate criminal charges, administrative, or civil proceedings for other remedies and damages under other contracts or applicable laws, rules, policies or procedures. Payment of liquidated damages does not relieve Specialized of the obligation to repay Medicaid for any overpayments.

7.6 All liquidated damages must be paid within 30 days of the date that they are imposed, or within 30 days of a finding that liquidated damages are due if Specialized invokes

the dispute resolution process. Any liquidated damages not paid within 30 days of the date they become due shall be deducted from the Medicaid payments owed to Specialized or any of its affiliates.

7.7. Liquidated damages imposed during the course of this Agreement that are not contested or are found proper after the dispute resolution process may be collected at any time in the same manner as a judgment of a court of competent jurisdiction and Specialized will not contest the amount due by any means whatsoever, including by administrative or judicial proceeding.

VIII. Sales and Acquisitions

8.1. If Specialized changes locations or sells, closes, purchases, or establishes a new business unit or location related to the furnishing of items or services that may be reimbursed by the Michigan Medicaid Program, Specialized shall notify the parties of this fact as soon as possible, but no later than within 30 days after the date of change of location, sale, closure, purchase, or establishment. This notification shall include the name and address of the new business unit or location, phone number, fax number, Medicare provider number, provider identification number or supplier number. Each new business unit or location shall be subject to all the requirements of this CIA.

IX. Enforcement

9.1. Except for decisions or actions that have been designated as being within the exclusive or sole discretion of a Party, the Parties have the right to seek specific performance of this Agreement in the Ingham County Circuit Court. Seeking specific performance shall not be a prerequisite to the Attorney General bringing any civil or criminal action that is not precluded by this Agreement.

9.2 The right to seek specific performance includes, but is not limited to, the Attorney General's right to a) seek enforcement of the provisions of this Agreement which require Specialized to cooperate with or provide information to the Attorney General or the MDCH, and b) compel compliance with the terms and requirements of this CIA. In such actions the burden of proof shall be on Specialized to show their compliance with this Agreement.

X. Dispute Resolution

10.1 All disputes under this Agreement involving questions of compliance with the terms of this Agreement are to be resolved by negotiation between the parties, and if they cannot agree, by the Court in accordance with the Settlement Agreement entered in the Ingham County Circuit Court.

10.2 In proceedings to enforce or interpret this Agreement the burden shall be on Specialized to demonstrate that it has fully and faithfully implemented and complied with the terms and conditions of this Agreement.

XI. Indemnification

11.1 Specialized will indemnify and hold harmless the Attorney General, the State of Michigan, the MDCH, and their officers, directors, agents, employees, and successors and assigns from any and all claims, causes of action, and liability, which arises out of this Agreement. Specialized will pay all reasonable and actual costs, expenses, judgments, settlements, and attorney fees incurred by the Attorney General, the State of Michigan, the MDCH, and their officers, directors, agents, employees, and successors and assigns in connection with any claim, cause of action, or liability asserted against one or more of them, which arises out of or in connection with this Agreement. This paragraph will apply to any and all claims, causes of action, or liability asserted by, among others, any past, present or future

Specialized employees or staff and any third party used by one or more of the Parties to fulfill its obligations under this Agreement.

11.2. The Attorney General and the MDCH shall provide Specialized with timely written notice of any claims or complaints that may invoke this section of the Agreement.

XII. State Law Governing Agreement

12.1. This Agreement is governed by the laws of the State of Michigan.

XIII. Miscellaneous

13.1. This Agreement constitutes the entire Agreement between the Parties with respect to the subject matter and may only be amended in writing, signed by authorized representatives of the Attorney General, Specialized, and Omnicare. There are no oral or written collateral representations, agreements, or understandings except as provided in this Agreement.

13.2. The waiver or failure of any party to exercise any rights under this Agreement shall not be deemed a waiver of any right or any future rights.

13.3. If any part of this Agreement is found or held invalid or unenforceable for any reason, by any court or governmental agency of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of this Agreement, which shall survive and be construed as if such invalid or unenforceable part had not been part of this Agreement.

13.4. This Agreement may not be assigned, in whole or in part, by either of the Parties without the prior written consent of the other party, and consent must not be unreasonably withheld.

13.5. This Agreement may be executed by counterpart signatures and copies of the Agreement shall have the same binding force and effect as an original.

13.6. The following provisions shall survive and remain in full force and effect after termination of this Agreement: Section II-B, paragraphs 2.17 and 2.18; Section V, paragraphs

5 1(d) and 5.4; Section VII, paragraph 7 7; Section IX, to the extent that an action required by this CIA remains incomplete after termination; and Sections XI, XII, and XIV. Expiration of this CIA shall not relieve any party from complying with any applicable law, rule, policy or procedure.

13 7. The Parties acknowledge and agree that this CIA involves the compromise of disputed claims and that it shall not be construed to be an admission or concession of any fact, liability, or fault.

XIV. Notices

14.1 Any notice or other communication given under this Agreement shall be in writing, delivered by hand, or through the United States Postal Service, registered mail, to the following individual's attention:

For Specialized:

Rolf K. Schrader
Regional Vice President
Omnicare, Inc.
100 Rivercenter Blvd, Ste 1500
Covington, KY 41011

-and-

Sanford Teplitzky
Ober, Kaler, Grimes & Shriver
120 East Baltimore Street
Baltimore, MD 21202

For the Michigan Department
of Community Health:

Ruth Shockey, Manager
Program Investigation Section
400 S. Pine St. PO Box 30479
Lansing, MI 48909-7979

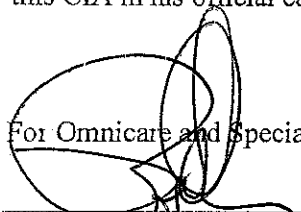
For the Attorney General:

Mark Matus
Assistant Attorney General
Department of Attorney General
Health Care Fraud Division
P. O. Box 30218
Lansing, MI 48909

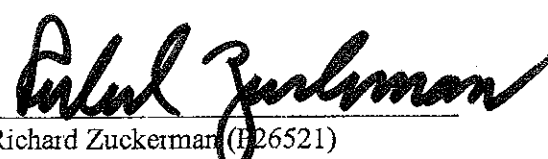
XV. Signatories

The parties have caused this Agreement to be executed by their duly authorized representatives. The signatories to this Agreement certify that they are authorized to execute this Agreement and to legally bind the parties they represent. Each of the signatories is executing this CIA in his official capacity.

For Omnicare and Specialized:


Rolf K. Schrader
Regional Vice President
Omnicare, Inc.
100 Rivercenter Blvd
Ste 1500
Covington, KY 41011

Dated: 10/4/06

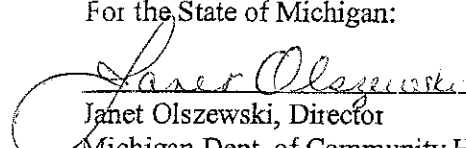

Richard Zuckerman (P26521)

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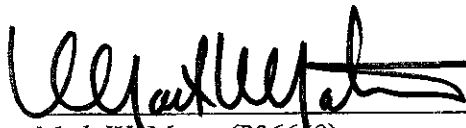
As Attorneys for Specialized Pharmacy
Services, Inc ; Omnicare, Inc ; and ICPI
Acquisition Corp , and As To Form Only

Dated: 10/4/06

For the State of Michigan:


Janet Olszewski, Director
Michigan Dept of Community Health
Lewis Cass Bldg , Sixth Floor
320 South Walnut Street
Lansing, MI 48913

Dated: October 5, 2006


Mark W. Matus (P36639)

Assistant Attorney General
Michigan Dept of Attorney General
Health Care Fraud Division
2860 Eyde Parkway
East Lansing, MI 48823
(517) 241-6500

Dated: October 5, 2006